

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Jonathan Berall, M.D., M.P.H.

Plaintiff,

v.

Verathon Inc., Pentax of America, Inc., Karl Storz Endoscopy-America, Inc., Aircraft Medical, Ltd., LMA North America, Inc., and AirTraq LLC.

Defendants.

Civ. No. 10-CV-5777 (BSJ)

**PLAINTIFF'S ANSWER TO  
DEFENDANT LMA NORTH AMERICA,  
INC.'S COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Without admitting the relevance of any of the allegations, Plaintiff Jonathan Berall, M.D., M.P.H. ("Dr. Berall") hereby answers Defendant LMA North America, Inc.'s ("LMA") counterclaims as follows:

Dr. Berall denies each and every allegation contained in the counterclaims that is not expressly admitted below. Any factual allegation admitted below is admitted only to the specific admitted facts, not as to purported conclusions, characterizations, implications, or speculations that may arguably follow from the admitted facts. Dr. Berall denies that LMA is entitled to the relief requested, or any other relief.

**A. Invalidity of U.S. Patent No. 5,827,178**

51. Paragraph 51 states no legal or other conclusions to which a response is necessary. Dr. Berall does not understand if LMA intends to include its affirmative defenses in

paragraphs 42-50 as counterclaims. To the extent LMA intends to assert these defenses as counterclaims, Dr. Berall denies them.

52. Paragraph 52 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

53. Paragraph 53 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits the assertions.

54. Paragraph 54 states legal conclusions to which no response is necessary.

Nevertheless, Dr. Berall admits that he has submitted himself to the Court's jurisdiction.

55. Admits paragraph 55 of LMA's counterclaims.

56. Admits paragraph 56 of LMA's counterclaims.

57. Denies paragraph 57 of LMA's counterclaims.

**B. Noninfringement of U.S. Patent No. 5,827,178**

58. Dr. Berall incorporates by reference his responses to paragraphs 51-57 as though fully set forth herein.

59. Denies paragraph 59 of LMA's counterclaims.

**DEFENSES**

1. Dr. Berall pleads the following defenses in response to LMA's allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the defenses described below, Dr. Berall specifically reserves all rights to allege additional defenses, including (without limitation) those that may be established during the course of discovery:

2. LMA fails to state counterclaims upon which relief can be granted.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Dr. Berall demands judgment against LMA dismissing each of the counterclaims in its entirety, denying LMA the “relief” it “requested,” and granting to Dr. Berall all of the relief demanded in the Complaint.

Dated: December 7, 2010

PEARL COHEN ZEDEK LATZER LLP

By: /s/ David A. Loewenstein  
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M.D., M.P.H.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing PLAINTIFF'S ANSWER TO DEFENDANT LMA NORTH AMERICA, INC.'S COUNTERCLAIMS to be served upon counsel of record by filing the document on the court's ECF system on December 7, 2010.

*/s/ Keren Livneh*  
Keren Livneh